

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

75-1265

To be argued by
WALTER J. HIGGINS, JR.

B
PMS.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

:

Appellee, : Docket No. 75-1265

-against-

:

WILLIAM PATE DEVONE,

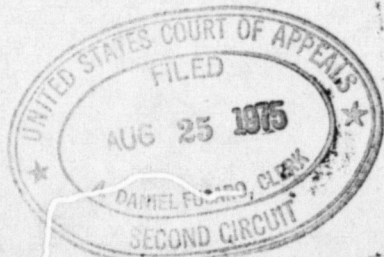
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Appellant. :

-----X

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



WALTER J. HIGGINS, JR., ESQ.,
MALONEY, VIVIANI & HIGGINS
Attorney for Appellant
1290 Avenue of the Americas
New York, New York 10019
(212) 586-6006

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75 CRIM. 283.

TITLE OF CASE

THE UNITED STATES

v's.

WILLIAM PATE DEVONE

ATTORNEYS

For U. S..

Ronald L. Garnett, AUSA.
791-1936

For Defendant:

DATE	PROCEEDINGS
3-18-75	Filed indictment.
3-31-75	Deft.(atty. present) Pleads not guilty. Motions returnable in 10 days Ordered photographed and fingerprinted. Released on his own recogni- zance. Case assigned to Judge Gagliardi for all purposes. Brieant,J.
04-01-75	Filed Govt.'s notice of readiness for trial.
5-19-75	Filed Govt.'s affdvt. for writ of habeas corpus ad testificandum for Isaac Garry ret: 5-20-75.
05-28-75	Before Judge Gagliardi jury trial begun.
05-29-75	Trial cont'd.
05-30-75	Trial cont'd. and concluded. Deft found not guilty on counts 1,4,5,6, 9,10,11 and guilty on counts 2,3,7,8 & 12. Presentence investigation ordered, for sentence 7-9-75 at 10. Deft. re- leased on own recognizance until date of sentence.Gagliardi,J.

DATE	PROCEEDINGS
06-11-75	Filed writ of habeas corpus ad testificandum for Isaac Gary. writ satisfied 5-29-75.
7-10-75	Filed notice of appeal from judgment of 7-9-75. mailed copies to U.S. Atty. and deft. 7-10-75. "Leave granted to file notice of appeal without prepayment of the statutory fee." Gagliardi, J.
07-09-75	FILED JUDGMENT-(atty. present) deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of THREE (3) MONTHS on each of counts 2,3,7,8 & 12 CONCURRENTLY, deft. is placed on probation for a period of 2 yrs., to commence upon expiration of confinement. Deft. is released on his own recognizance appeal. Gagliardi, J. issued all copies.
07-15-75	Filed Govt.'s memo. with respect to Devone's defense of coercion.
07-15-75	Filed memo. of law regarding entitlement of Govt. to question its own witnesses with regard to their prior guilty pleas and acts of misconduct, and also with respect to promises of leniency made by Govt. officials.
-15-75	Filed deft.'s requests to charge.
-15-75	Filed Govt.'s requests to charge.
-15-75	Filed Govt.'s suppl. request to charge.

RLT:par
74-3927
D-25-04

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

-v- :

INDICTMENT

WILLIAM PATE DEVONE, :

75 Cr.

Defendant.

75 CRIM. 283

Counts One through Ten

The Grand Jury charges:

On or about the dates set forth in Counts One through Ten, in the Southern District of New York, WILLIAM PATE DEVONE, the defendant, with intent to defraud the United States did utter and publish as true, and caused to be uttered and published as true, false, forged and counterfeited writings, namely, the endorsement of the payee on United States Treasury Checks, as described below, knowing the same to be false, forged and counterfeited, the checks being genuine obligations of the United States:

<u>Count</u>	<u>Date</u>	<u>Check Description</u>	<u>Payee</u>
1	July 3, 1974	No. 24,002,200, Symbol 3046, in the amount of \$243.70	Earl R. LeBlanc 47 Featherbed Lane Bronx, New York
2	July 22, 1974	No. 32,262,563, Symbol 4001, in the amount of \$154.18	Gladys Burns 1945 Davidson Avenue Bronx, New York
3	July 22, 1974	No. 32,262,562, Symbol 4001, in the amount of \$203.26	Gladys Burns 1945 Davidson Avenue Bronx, New York

4 May 30, 1974

No. 44,769,246
Symbol 3047, in
the amount of
\$199.37

Thomasina Thompson
1592 Jesup Avenue
Bronx, New York

5 July 3, 1974

No. 24,002,775
Symbol 3046, in
the amount of
\$211.60

William Rivera
47 Featherbed Lane
Bronx, New York

<u>Count</u>	<u>Date</u>	<u>Check Description</u>	<u>Payee</u>
6	June 7, 1974	No. 89,1000,991 Symbol 3047, in the amount of \$81.25	Ana R. Cordero 1485 Nelson Avenue Bronx, New York
7	Augus, 1974	No. 74,199,773 Symbol 3104, in the amount of \$316.00	James B. Dayle 1658 Davidson Avenue Bronx, New York
8	August 3, 1974	No. 72,494,693, Symbol 3046, in the amount of \$213.80	Bertha Dubin 54 West 174th Street Bronx, New York
9	July 1, 1974	No. 76,780,369 Symbol 2073, in the amount of \$320.95	James A. Edens 39-40 Featherbed Lane Bronx, New York
10	July 1, 1974	No. 62,614,815, Symbol 4001, in the amount of \$206.85	Ruthann Toppin 841 Beck Street Bronx, New York

(Title 18, United States Code, Sections 495 and 2.)

Counts Eleven and Twelve

The Grand Jury further charges:

On or about the dates set forth in Counts Eleven and Twelve, in the Southern District of New York, WILLIAM PATE DEVONE, the defendant, unlawfully, wilfully and knowingly did have in his possession the contents of certain letters, addressed as set forth below, which had been stolen, taken, embezzled and abstracted from and out of a post office, letter box, mail receptacle, mail route and other authorized depository for mail matter, knowing the same to have been stolen, taken, embezzled and abstracted:

Count Date Contents Address

<u>Case</u>	<u>Date</u>	<u>Comments</u>	<u>Addressee</u>
11	June 24, 1974	City of New York Check No. 53300355, in the amount of \$230.00	Malvine Brockett 2144 Crotona Parkway Bronx, New York
12	July 19, 1974	City of New York Check No. 1959277, in the amount of \$337.70	P.A. De Jesus 1490 Jesup Avenue Bronx, New York

(Title 18, United States Code, Sections 1708 and 2.)

Ronald T. MacDonough
FOREMAN

PAUL J. CURRAN
United States Attorney

2 (Recess taken.)

3 (Jury present.)

4 THE CLERK: The Court is about to charge the jury.
5 Anyone who wishes to leave may do so now. Once the charge
6 has started, no one will be permitted to leave or enter the
7 courtroom.

8 Marshal, will you please lock that door.

9 CHARGE OF THE COURT

10 THE COURT: Members of the jury, the announcement
11 of not permitting anybody to enter or leave the courtroom
12 during the course of the Court's charge is so that you will
13 not be distracted in any way from my instructions to you.

14 You are about to enter upon your final duty, which
15 is to decide the fact issues in this case, and as I told
16 you in my instructions at the beginning of the trial, your
17 principal function during the taking of testimony would be
18 to listen carefully and observe each witness as he testified,
19 and it has been evident to me that you have faithfully dis-
20 charged this duty. And we have now reached the point where
21 the evidence has all been presented to you, and the closing
22 arguments of the lawyers have been made.

23 Shortly, after I have completed my explanation of
24 the applicable law, you will retire to deliberate upon your
25 verdict.

1
2 You are to perform your final duty in an attitude
3 of complete fairness and impartiality. You are to appraise
4 the evidence calmly and deliberately, and as was emphasized
5 by me at the time of your selection as jurors, without bias
6 or prejudice with respect to either the Government or the
7 defendant as parties to this controversy.

8 Now, the fact that the prosecution is brought in the
9 name of the United States of America entitles the Government
10 to no greater consideration than that accorded to any other
11 party in the case. And, by the same token, it is entitled
12 to no less consideration.

13 All parties stand as equals before the bar of
14 justice.

15 Your final role is to pass upon and decide the fact
16 issues in the case. You, the members of the jury, are the
17 sole and exclusive judges of the facts. You pass upon the
18 weight of the evidence. You determine the credibility of
19 the witnesses. You resolve such conflicts as there may be
20 in the testimony, and you draw whatever reasonable inferences
21 that are to be drawn from the facts as you have determined
22 them.

23 My function at this point is to instruct you as to
24 the law and it is your duty to accept these instructions and
25 apply them to the facts as you determine them to be. The

logical result of that application will be your verdict in this case.

Now, with respect to any fact matter, it is your recollection and yours alone that governs. Nothing that counsel, either for the Government or for the defendant, may have said with respect to any matters in evidence, that is to say, as to any factual matter, whether stated in a question, in argument, or in summation, is to be substituted for your own independent recollection which governs at all times.

Now, in addition, nothing that counsel have said with respect to their opinions as to how you should decide this case is to be considered by you. Opinions of the counsel are not facts and are to have no bearing on how you decide this case. Nor is anything that the Court may have said during the progress of the trial with respect to a fact matter or that I might say during the course of these instructions to be taken in substitution for your own independent recollection.

And before we consider the precise charges of the indictment, a number of preliminary observations are in order.

In determining the facts, you should not be influenced by rulings that the Court may have made during the

trial. These rulings dealt with matters of law and not questions of fact. Counsel for both sides not only had the right but indeed the duty to present whatever legal objections they believed existed as to the admission of offered evidence.

The Court's rulings on objections made either by the attorney for the Government or the attorney for the defendant are not to be considered by you, and of course, as I told you at the outset, where I sustained an objection to a question, you should not speculate on what the witness would have said had he been permitted to answer, nor may you draw any inferences from the wording of the question or that it was asked, nor should you speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer. And, similarly, where any testimony has been stricken, it is not evidence, and you are bound to disregard it. And you must remember, as I'm sure you do, as I have told you before, that in ruling on objections, the Court was deciding questions of law and not questions of fact, which are for the jury alone.

Now, I am aware of the fact that jurors might be influenced or can be influenced by what they feel is the opinion of a judge as to how a case should be decided. I want you to understand that I have no opinion with respect

1 to the guilt or innocence of this defendant. If you do think
2 that you have gleaned some indication as to my opinion of
3 the case either from any questions I may have asked or from
4 my expression or tone of voice, disregard it entirely. The
5 Court has no opinion as to the veracity or credibility of
6 the witnesses or the merits of the case. You are the judges
7 of the facts and you are the sole judges of the guilt or
8 innocence of the defendant. I'm merely a judge of the law.
9 The fact issues must be decided by you solely and only
10 within the framework of the evidence and the principles of
11 the law that apply.
12

13 And, finally, please do not single out any one
14 instruction of mine as stating the law alone. Take them all
15 into account after you have heard them all.

16 Now, you are to consider only the evidence in
17 this case, and that evidence consists of the sworn testimony
18 of the witnesses, the exhibits which have been received in
19 evidence, the facts which have been stipulated, and the
20 presumptions which I will tell you about in these instructions,
21 such as the presumption of innocence. But while you are to
22 consider only the evidence in the case, you are not limited
23 to the bald statements of the witnesses. On the contrary,
24 you are permitted to draw from the facts, which you find
25 to have been proved, such reasonable inferences as seem justified

to you in the light of your own experience. An inference is a fancy word for a conclusion which reason or common sense leads you to draw from the facts that have been proved here.

In considering the evidence, you must remember, as I told you at the beginning of this trial, that the indictment is only a formal method of accusing a defendant of the crime charged and it is not evidence against the defendant. Nor is any weight to be given to the fact that an indictment has been returned against the defendant.

Generally speaking, there are two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence, such as the testimony of an eye witness, somebody who saw or heard something done or said. And the other is indirect or circumstantial evidence, which is the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

Generally, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts in accordance with all the evidence in the case, both direct and circumstantial.

We have a rather common example that is used by myself and my colleagues in demonstrating what is meant by circumstantial evidence. Assume that when you came to court this morning the sun was shining brightly, the sky was clear,

and there were no clouds in the sky; in addition, assume that we were in one of our modern air conditioned courtrooms on the first floor that had no windows in it. Assume further that when we'd been in court for about an hour or so, someone walked in carrying an umbrella which was dripping wet and shortly thereafter a second man came in wearing a rain coat and the rain coat was wet.

Now, even though you could not look out and directly observe the weather, and even though it wasn't raining when you came into the courthouse, you could reasonably and logically conclude from the combination of facts which I have described that it was in fact raining outside. That is circumstantial evidence; a chain of circumstances which leads you to conclude that a fact exists or doesn't exist. And, as I told you before, the law generally makes no distinction between direct and circumstantial evidence. It only requires that you find the facts in accordance with all the evidence in the case.

Now, the defendant in this case has entered a plea of not guilty to the charges of the indictment. And thus the burden is on the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing

any evidence. As I told you during your selection as jurors and at the outset of this trial, the law presumes a defendant to be innocent of crime. Thus, a defendant, although accused, begins the trial with no evidence against him, and the law permits nothing but legal evidence, presented before you as jurors, to be considered in support of any charge against a defendant. The presumption of innocence remains with the defendant throughout the trial and in your deliberations until such time, if ever, that the jury is satisfied of guilt beyond a reasonable doubt.

Thus the presumption of innocence alone is sufficient to acquit a defendant unless and until, after careful and impartial consideration of all the evidence in the case, you as jurors are unanimously convinced of a defendant's guilt beyond a reasonable doubt.

Before I further instruct you on the law, I think it would be helpful and appropriate at this time to briefly identify the witnesses who have appeared before you in the order in which they were called. This has been a short case, and counsel have reviewed the testimony, and it would only be a further burden upon you for me to review what has already been testified to here and what counsel have summarized to you in their summations.

I want to remind you, however, that with respect to

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2 any fact matter it is your recollection and yours alone that
3 governs.

4 Now, the case started with the introduction of
5 certain exhibits which are available to you. There were
6 certain stipulations that were entered into between the
7 Government, the defendant, and defense counsel. Our first
8 live witness was Derry Allen, the manager of the Shopwell
9 store at Featherbed Lane. He was followed on the stand by
10 Roy Nedrow, Special Agent of the Secret Service. Our next
11 witness was Isaac Gary, otherwise known as Bub or Bubba.
12 The next witness was Daisy Brown, cashier at Shopwell. And
13 the final witness was Archie Melton, also known, I guess,
14 as Big T.

15 Now, I'm going to turn now to the specific charges
16 alleged in the indictment. The indictment charges in counts
17 1 through 10 that the defendant, William Pate Devone, with
18 intent to defraud the United States, uttered and published as
19 true and caused to be uttered and published as true ten forged
20 United States Treasury checks, knowing that the endorsements
21 of the payees' names on the back of the checks were forged.

22 In counts 11 and 12, the indictment charges the
23 defendant with the possession of the contents of certain
24 letters which had been stolen from the mails, that is, two
25 checks which had been issued by the City of New York.

A separate crime or offense is charged in each of the twelve counts in the indictment. Each charge and the evidence pertaining to it should be considered separately. The fact that you may find the defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to any other offenses charged.

Defendant is charged with violating Title 18, United States Code, Section 495, which provides, in pertinent part, as follows: "Whoever utters or publishes as true any such false, forged, altered or counterfieted writing, with intent to defraud the United States, knowing the same to be false, altered, forged or counterfieted, commits a crime."

I will now read counts 1 through 10 of the indictment.

The Grand Jury charges: on or about the dates set forth in counts one through ten, in the Southern District of New York -- and the Southern District of New York, for our purposes, includes Manhattan and Bronx Counties, among others -- William Pate Devone, the defendant, with intent to defraud the United States, did utter and publish as true, and cause to be uttered and published as true, false, forged, and counterfieted writings, namely the endorsement of the payee on United States Treasury checks as described below, knowing the same to be false, forged and counterfeited, the

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2 checks being genuine obligations of the United States: and
3 count 1, date July 3, 1974, check description, number 24,002,200,
4 symbol 3046, in the amount of \$243.70, the payee Earl R.
5 LeBlanc, 47 Featherbed Lane, Bronx, New York.

6 Count 2, date July 22, 1974, check description,
7 number 82,262,563, symbol 4001, in the amount of \$154.18,
8 payee Gladys Burns, 1945 Davidson Avenue, Bronx, New York.

9 You will have available to you in your deliberations
10 the indictment, so you don't have to remember these exact
11 numbers and so forth, but it is necessary for me to read to
12 you what the indictment charges.

13 Count 3, July 22, 1974, check description number
14 82,262,562, symbol 4001, in the amount of \$308.36, payee
15 Gladys Burns, 1945 Davidson Avenue, Bronx, New York.

16 Count 4, May 30, 1974, number 44,769,246, symbol
17 3047, in the amount of \$199.37, payee Thomasina Thompson,
18 1592 Jesup Avenue, Bronx, New York.

19 Count 5, July 3, 1974, number 24,002,775, symbol
20 3046, in the amount of \$211.60, payee William Rivera, 47
21 Featherbed Lane, Bronx, New York.

22 Count 6, June 7, 1974, number 9,1000,991, symbol
23 3047, in the amount of \$81.25, payee, Ana R. Cordero, 1485
24 Nelson Avenue, Bronx, New York.

25 Count 7, August 1974, number 74,199,773, symbol

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2 3104, in the amount of \$316.00, James B. Dayle, 1668 Davidson
3 Avenue, Bronx, New York.

4 Count 8, August 3, 1974, number 72,494,698,
5 symbol 3046, in the amount of \$213.80, Bertha Dubin, 54 West
6 174th Street, Bronx, New York.

7 Count 9, July 1, 1974, number 76,780,369, symbol
8 2073, in the amount of \$320.95, payee James A. Edens, 38-40
9 Featherbed Lane, Bronx, New York.

10 And count 10, July 1, 1974, number 62, 614,815,
11 symbol 4001, in the amount of \$206.85, payee Ruthann Toppin,
12 841 Beck Street, Bronx, New York.

13 Now, as to the elements of the crimes involved or
14 charged in counts 1 through 10, you may not find the
15 defendant guilty on these uttering counts unless you are
16 satisfied that the Government has proved each of the follow-
17 ing elements beyond a reasonable doubt: one, that the checks
18 were genuine obligations of the United States; two, that the
19 endorsements on the back of the checks were forgeries; three,
20 that on or about the dates set forth in the indictment the
21 defendant willfully and knowingly authorized the cashing or
22 cashed the checks or aided and abetted others in cashing the
23 checks, knowing the endorsements were forgeries; and, four
24 that the defendant intended to defraud the United States.

25 Now, you will recall, in connection with the first

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2 element, that the Government and the defendant have stipulated
3 and agreed that the United States Treasury checks described
4 in the indictment were genuine obligations of the United
5 States.

6 Now, with regard to the second element, namely
7 forgery, the writing of a payee's endorsement on a genuine
8 U. S. Treasury check by a person other than the payee, if
9 done willfully and without authority and with intent to de-
10 fraud is a forgery within the statute. The payee, as you all
11 know, is the person to whom the check is made out.

12 Now, with regard to the third element, that is,
13 that on or about the date set forth in the indictment, the
14 defendant willfully and knowingly authorized the cashing or
15 cashed the checks or aided and abetted others in cashing the
16 checks, knowing the endorsements were forgeries, the Govern-
17 ment relies upon a statute which reads in relative part as
18 follows: "Whoever commits an offense or aids, abets, or
19 counsels, commands, induces or procures its commission is
20 punishable as a principal."

21 This means not only is the person who actually
22 commits an illegal act, that is the principal, punishable
23 but anyone who aids and abets him in committing that illegal
24 act is likewise punishable.

25 Accordingly, you may find the defendant guilty of

the offense charged if you find, beyond a reasonable doubt, that the offense was committed and that the defendant aided and abetted in its commission. To aid and abet does not mean just knowing that a crime is being committed, even if one is present during its commission. That alone is not sufficient. In other words, to find that a defendant aided and abetted another to commit a crime, you must be satisfied beyond a reasonable doubt that he knowingly, in some substantial measure, associated himself with the venture, that he participated in it as something he wished to bring about, and that he sought by his actions to make it succeed.

In other words, if one fully aware of what he is doing plays a significant role in facilitating a transaction, prohibited by law, he is equally guilty with the person who directly performs the illegal acts, even though the latter played a greater or much larger role in the perpetration of the crime.

The fourth element, intent to defraud, of uttering a forged writing, the evidence in the case need not establish that the United States or anyone was actually defrauded, but only that the accused acted willfully and with the intent to defraud. To act with intent to defraud means to act with a specific intent to deceive or cheat, ordinarily for the purpose of either causing some financial loss to another, or

bringing about some financial gain to oneself.

Now, with respect to counts 11 and 12 of the indictment, charging the defendant with violating Title 18 of the United States Code, Section 1708, the pertinent parts of which read as follows: "Whoever unlawfully has in his possession any letter or any article or thing contained therein which has been stolen, taken, embezzled or abstracted from the mail, knowing the same to have been stolen, taken, embezzled or abstracted, commits a crime."

I will read to you the two counts, 11 and 12, in the indictment.

The Grand Jury further charges on or about the dates set forth in counts 11 and 12 in the Southern District of New York, William Pate Devone, the defendant, unlawfully, willfully and knowingly did have in his possession the contents of certain letters, addressed as set forth below, which had been stolen, taken, embezzled and abstracted from and out of a post office letter box mail receptacle, mail route, and other authorized depository for mail matter, knowing the same to have been stolen, taken, embezzled and abstracted:

Count 11, June 24, 1974, contents, City of New York check number 533003355 in the amount of \$230.00, addressee, Malvine Brockett, 2144 Crotona Parkway, Bronx, New York.

Count 12, July 19, 1974, City of New York check

2 number 1969277, in the amount of \$337.70, addressee, F. A.
3 DeJesus, 1490 Jesup Avenue, Bronx, New York.

4 Before you may find the defendant guilty on counts
5 11 and 12 of the indictment you must find, beyond a reasonable
6 doubt, the following four elements: one, that the checks de-
7 scribed in the indictment were stolen from the mail. Two,
8 that on or about the dates set forth in the indictment the
9 defendant had in his possession the checks so named. Three,
10 that the defendant unlawfully, willfully and knowingly had
11 possession of these checks. And, four, that at the time the
12 defendant had possession of the checks he knew they were stolen.

13 In connection with the first element, stolen from
14 the mails, you may find, in the absence of any other expla-
15 nation, that a letter properly mailed and never received
16 by the addressee, but found in improper hands, was stolen from
17 the mails. In short, you may make common sense inferences
18 from proven facts.

19 The second element, which you must find beyond a
20 reasonable doubt before you may find the defendant guilty,
21 that the defendant possessed the stolen mail, you may make
22 such a finding if you conclude that the defendant possessed
23 stolen mail, that is, the letter or its contents. Physical
24 custody of the checks obviously meets this requirement.

25 If you find beyond a reasonable doubt that the

2 defendant had in his possession stolen mail and if you find
3 beyond a reasonable doubt that the checks had been stolen
4 from the mails only shortly before the defendant possessed
5 it, the law permits but does not require or compel you to
6 infer that the defendant knew that the checks were stolen,
7 unless the circumstances surrounding the defendant's posses-
8 sion of the checks satisfactorily explain his innocent pos-
9 session of it.

10 As I have indicated to you before, the law does not
11 require the defendant to present any evidence.

12 Now, I have used the words "knowingly" and "will-
13 fully." And, as to each of the twelve counts alleged in the
14 indictment, before you may find the defendant guilty, you
15 must find that he acted knowingly and willfully. A person
16 acts knowingly if he acts voluntarily and intentionally and
17 not because of mistake or accident or other innocent reason.
18 The purpose of adding the word "knowingly" was to ensure that
19 no one would be convicted for an act done because of mistake
20 or accident or other innocent reason. A person acts willfully
21 if he acts voluntarily and intentionally and with the specific
22 intent to do something the law forbids, that is to say, with
23 bad purpose either to disobey or disregard the law.

24 Now, the defendant claims that there is evidence
25 in this case which supports a defense of coercion. Coercion,

2 or compulsion, may provide a legal excuse for the crimes
3 charged in the indictment. In other words, however, to
4 provide a legal excuse for any criminal conduct, the compulsion
5 must be present, and immediate, and of such a nature as to
6 induce a well-founded fear of impending death or serious
7 bodily injury; and there must be no reasonable opportunity
8 to escape the compulsion without committing the crime, or
9 participating in the commission of the crime.

10 If the evidence in the case should leave you with
11 a reasonable doubt whether, at the time and place of the
12 alleged offense, the accused acted, or failed to act, will-
13 ingly and voluntarily, that is to say, whether the accused
14 was forced, in effect, to commit or aid in the commission of the
15 crime charged in the indictment, by coercion or compulsion,
16 as just explained, then you should find the defendant not
17 guilty.

18 Now, this concludes my charges as to the specific
19 offenses charged in the indictment. There are some additional
20 comments that I should make to you before you retire for your
21 deliberations.

22 At the beginning of my charge I told you that a
23 defendant was presumed innocent, and the presumption remained
24 with the defendant unless and until the jury is unanimously
25 satisfied of guilt beyond a reasonable doubt.

In describing the various elements of the offenses charged in the indictment, I told you that the Government must establish each of those elements by proof beyond a reasonable doubt. And you quite naturally ask, what is a reasonable doubt? The words almost define themselves; that there is a doubt founded in reason and arising out of the evidence or lack of evidence. It is a doubt which a reasonable person has after carefully considering all the evidence. A reasonable doubt is not a vague or speculative or imaginary doubt. It is not caprice, whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant. A reasonable doubt is a doubt which appeals to your reason, your common sense, your experience, and your judgment. It is a doubt which would cause a reasonable man or woman like yourself to hesitate to act in relation to your own important private affairs.

Mere suspicion will not justify conviction. Suspicion is not a substitute for evidence. Nor is it sufficient to convict if you find that the circumstances merely rendered an accused probably guilty. On the other hand, it is not necessary that the Government must prove guilt beyond all possible doubt, but the proof must be of sufficient convincing character that you would be willing to rely and act on it in the important affairs of your

own life.

In sum, a reasonable doubt exists whenever, after a fair and impartial consideration of all the evidence before you, you candidly and honestly state that you do not have abiding conviction that the defendant is guilty of the crimes.

Now, during my explanation of the charges, I have used the words, "knowledge and intent" as an element of the crime. And an act or failure to act is knowingly done if done voluntarily and intentionally and not because of mistake or other innocent reason. Further comment may be helpful.

Knowledge and intent exist in the mind. As we all realize, it is not possible to open up a man's head and see what goes on in his mind. The only way we have for arriving at a decision on these questions is for you to take into consideration all the facts and circumstances shown by the evidence and to determine from all such facts and circumstances whether the requisite knowledge and intent were present at the time in question. Direct proof is unnecessary. Knowledge and intent may be inferred from all the surrounding circumstances.

Now, there has been some proof in here about similar acts that are not charged in the indictment. You may consider, in determining whether the defendant acted with guilty

2 knowledge or intent, the fact, if you find it true, that the
3 defendant engaged in other transactions similar to those
4 charged in the indictment. The fact that the accused may
5 have committed an offense at some other time is not any
6 evidence or proof whatever that at a later time the accused
7 committed the offenses charged in the indictment, even
8 though both offenses are of a like nature. Evidence as to
9 an alleged earlier offense of a like nature may not be, there-
10 fore, considered by the jury in determining whether the accused
11 did the acts charged in the indictment. Nor may such evidence
12 be considered for any purpose whatever unless the jury first
13 find that other evidence in the case, standing alone,
14 establish beyond a reasonable doubt that the accused did
15 the act charged in the indictment.

16 If you should find beyond a reasonable doubt from
17 the evidence in the case that the accused did the acts charged
18 in the indictment, then the jury may consider evidence as
19 to an alleged earlier offense of a like nature in determining
20 the state of mind or intent with which the accused did the act
21 charged in the indictment. And where all the elements of an
22 alleged earlier offense of a like nature are established
23 by evidence which is clear and conclusive, the jury may, but
24 is not obliged to, draw the inference and find that in doing
25 the act charged in the indictment the accused acted willfully

and with specific intent and not because of mistake or accident or other innocent reason.

Now, intent and motive should never be confused. Motive is what prompts a person to act or fail to act. Intent refers only to the state of mind with which the act is done or omitted. I charge you that proof of motive is not a necessary element of the crimes with which the defendant is charged. Proof of motive does not establish guilt; nor does want of proof of motive establish that a defendant is innocent.

So the presence or absence of motive is immaterial, except as a circumstance which the jury may consider as bearing on the defendant's state of mind or intent.

Now, if you find that a defendant, when questioned by a law enforcement official concerning criminal allegations voluntarily and intentionally made any deliberate, false statement of an exculpatory character, you may consider such false exculpatory statement as circumstantial evidence from which consciousness of guilt or a criminal intent may be inferred. Whether or not evidence as to a defendant's explanation or statements points to a consciousness of guilt and the significance, if any, to be attached to any such evidence are matters for determination by you.

Not too much longer.

I told you at the beginning of the trial that one of your most important functions would be to assess the credibility of the witnesses who testified. You, as jurors, are the sole and exclusive judges of the credibility of the witnesses. You and you alone must determine what weight their testimony deserves. I gave you some guidelines at the outset of the case. I am going to repeat and expand upon those instructions at this point. You should not be influenced by the mere number of witnesses called; the weight of the evidence is not necessarily determined by the number of witnesses testifying on either side. Rather you should consider all the facts and circumstances in evidence to determine where the truth lies.

In assessing credibility you should carefully scrutinize the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether the witness is worthy of belief. The degree of credit to be given a witness should be determined by his demeanor, his relationship to the controversy and the parties, his bias or impartiality, the reasonableness of his statements, the strength or weakness of his record viewed in the light of all other testimony, and the attendant circumstances in the case, and the extent to which, if at all, each witness is either supported or contradicted

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2 by other evidence.

3 How did the witness impress you? Did his version
4 appear straight forward and candid or did he try to hide some
5 of the facts? Is there a motive to testify falsely?

6 In passing upon the credibility of a witness you
7 may take into account inconsistencies or contradictions as
8 to material matters in his own testimony or any conflict
9 with that of another witness, also any inconsistencies or
10 omissions in prior testimony or any prior statement of
11 matters as to which he may have testified upon the trial.

12 Inconsistencies or discrepancies in the testimony
13 of a witness or between the testimony of different witnesses
14 may or may not cause the jury to discredit such testimony.
15 Two or more persons witnessing an incident or a transaction
16 may see or hear it differently. An innocent misrecollection
17 like failure of recollection is not an uncommon experience.
18 A witness may be inaccurate, contradictory, or untruthful
19 in some respects, and yet be entirely credible in the
20 essentials of his testimony.

21 In weighing the effect of a discrepancy, consider
22 whether it pertains to a matter of importance or an unimportant
23 detail, and whether the discrepancy results from
24 innocent error or willful falsehood. If you find that any
25 witness has testified falsely, you can do one of two things.

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You can either reject all of that witness's testimony on the ground that it is all tainted by falsehood and that none of it is worthy of belief, or you can accept that part which you believe to be credible and reject only that part which you believe to be tainted by falsehood. Should you find that all or part of a particular witness's testimony was false, you may infer that the opposite of that testimony is the truth, unless there is no other evidence to that effect. Any testimony rejected by you as false is no longer in the case insofar as any finding that you may make is concerned. You will recall that I told you that an inference was a conclusion which reason or common sense leads you to draw from the facts which you find have been proved. Thus a finding of a fact may not be established merely by a negative inference arising from your disbelief and rejection of any testimony.

In passing upon credibility, the ultimate question for you to decide is, did the witness tell the truth here before you? It is for you to say whether his testimony at this trial is truthful in whole or in part, in the light of his demeanor, his explanations and all the evidence in the case. In assessing the credibility of a witness you may or may not take into consideration evidence that the witness has in the past been convicted of certain crimes in determining that witness's credibility. While prior convictions

2 may be a factor affecting credibility it by no means follows that
3 the witness is for that reason necessarily untruthful. Prior
4 convictions are just one of a number of factors which may be
5 considered when you determine his credibility. Always the
6 ultimate question is, did the witness testify truthfully before
7 you?

8 In connection with the question of credibility, I
9 wish to bring to your attention one of the rules of this
10 Court, which relates to the testimony of an accomplice.
11 An accomplice is one who unites with another person in the
12 commission of a crime voluntarily and with common intent.
13 In the prosecution of crime the Government is frequently
14 called upon to use witnesses who are accomplices. Often
15 it has no choice. The Government must rely upon witnesses
16 to transactions such as they are. Under Federal Law, there
17 is no requirement that the testimony of an accomplice be
18 corroborated. A conviction may rest upon the uncorroborated
19 testimony of an accomplice, if you believe it, and find it
20 credible. However, the testimony of an accomplice should be
21 viewed with great caution and scrutinized carefully. In as-
22 sessing the credibility of a accomplice, as that with any
23 witness, you may consider any interest in the outcome of the
24 case. You may consider evidence as to any benefit the witness
25 expects to derive or has derived from his testimony or

evidence as to a motive to place responsibility on others.

If you find that the testimony of an alleged accomplice was deliberately untruthful, you should unhesitatingly reject it. On the other hand, if upon a cautious and careful examination you are satisfied that such witnesses have given here a substantially truthful version of events to which they testified, such testimony should be given appropriate consideration together with all the other evidence in the case in determining the guilt or innocence of the defendant.

As always, the ultimate question, in passing upon the credibility of a witness, is after taking into account all factors that may affect his testimony, did he testify truthfully before you as to events to which he testified?

I have told you several times that a defendant is not required under our laws to prove his innocence. He is presumed to be innocent at all times, and through the entire trial, unless and until the Government proves his guilt beyond a reasonable doubt. For these reasons, a defendant need not take the witness stand and testify in his own behalf. Therefore, the fact that Mr. Devone did not testify at this trial does not create any presumption against him, and I charge you that this fact must not weigh in the slightest against the defendant nor shall this fact enter into your discussions or deliberations in any manner.

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2 In your deliberations, please do not discuss the
3 question of possible punishment. That is a matter that rests
4 on my conscience and my conscience alone, because the Judge
5 and the Judge alone is the one who has the obligation of
6 imposing sentence when and if guilt is determined. If you do
7 discuss it amongst yourselves, then you are encroaching upon
8 my function, and I ask you not to do it. Your function is
9 to consider the facts and determine the facts, and my function
10 is to pass upon the law and in the event of conviction to
11 impose sentence.

12 If you find on all the evidence that the evidence
13 respecting the defendant leaves a reasonable doubt as to his
14 guilt, you should not hesitate for a moment to return a
15 verdict of not guilty. On the other hand, if you find beyond
16 a reasonable doubt that the law has been violated as
17 charged, you should not hesitate because of sympathy or be-
18 cause of any other reason to render a verdict of guilty.

19 You are here to determine the guilt or innocence
20 of the accused from the evidence in the case. You are not
21 called upon to return a verdict as to the guilt or innocence
22 of any other person or persons. So, if the evidence in the
23 case convinces you beyond a reasonable doubt of the guilt of
24 the defendant, you should so find, even though you may
25 believe one or more other persons are also guilty. But if

there is any reasonable doubt in your minds after impartial consideration of all the evidence in the case, it is your duty to find the defendant not guilty.

As I indicated to you before, and I want to stress again, a separate crime or offense is charged in each count of the indictment, and each charge, and the evidence pertaining thereto, is to be considered separately and the fact that you may find the defendant guilty or not guilty as to one of the counts charged should not control your verdict as to any other count charged.

The verdict must represent the considered judgment of each juror. In other words, to return a verdict it is necessary that each juror agree thereto. That is, your verdict must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if convinced it is erroneous. Do not surrender your honest convictions as to the weight or effect of evidence solely because of the opinion of your fellow jurors or for the mere

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2 purpose of returning your verdict. You are not partisans.
3 You are judges; judges of the facts. Your sole interest is
4 to ascertain the truth from the evidence in the case.

5 Now, if it becomes necessary during deliberations
6 to communicate with the Court you may send a note by the
7 Marshal, signed by your foreman and by one or more members
8 of the jury. No member of the jury should ever attempt to
9 communicate with the Court by any means other than a signed
10 writing, and the Court will never communicate with any
11 member of the jury on any subject touching the merits of the
12 case, otherwise than in writing, or orally here in open Court.
13 You will note from the oath that is about to be taken by the
14 Marshal that he, too, as well as all other persons, are
15 forbidden to communicate in any way or any manner with any
16 member of the jury on any subject touching the merits of
17 the case.

18 Bear in mind, also, that you are never to reveal
19 to any person, not even the Court, how the jury stands,
20 numerically or otherwise, on the question of the guilt or
21 innocence of the accused unless and until after you have
22 reached a unanimous verdict.

23 That does not mean that I cannot take a separate
24 verdict on separate counts, but that is something we may or
25 may not come to later on.

2 It is proper to add the caution that nothing said
3 in these instructions -- nothing in any form of verdict
4 prepared for your convenience -- is to suggest or convey
5 in any way or manner any intimation as to what verdict I
6 think you should find. What the verdict shall be is the
7 sole and exclusive duty and responsibility of the jury.

8 I have prepared and will submit to you a form of
9 verdict which will make it easier for you to announce your
10 verdict, and it will read, on count 1, "We the jury, unani-
11 mously find," and it will be blank, and when you come back
12 and report, you will go down counts 1 through 12 that way,
13 and when you come back you will report your verdict that way.
14 It is customary, but it is not necessary that the person oc-
15 cupying the first seat is the foreman of the jury. However,
16 you are permitted, if you desire, to elect any one of your
17 members as your foreman.

18 How and in what manner you conduct your delibera-
19 tions, is entirely up to you. I will tell you that your
20 lunch will be here sometime within the next half or three-
21 quarters of an hour. I suggest that when it does come that
22 you sit back and enjoy it, and not continue deliberations
23 while you are having your lunch. But, as I say, how you
24 conduct your deliberations is up to you.

25 I have to give counsel an opportunity to see whether

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2 or not I have made any errors in my charge on the law to you
3 here and I will take that at the side bar.

4 (At the side bar.)

5 THE COURT: Mr. Higgins, any exceptions?

6 MR. HIGGINS: The only exception I have, your Honor,
7 is that -- it is not an exception -- I thought perhaps your
8 Honor could expand a bit on the obligations of the defendant,
9 lack of an obligation to call any witnesses, anybody.

10 THE COURT: I did it two or three times, I think,
11 really. He almost thought I did it too much.

12 Any requests?

13 MR. HIGGINS: No, your Honor.

14 THE COURT: Any exceptions or requests?

15 MR. GARNETT: No, your Honor, other than I think
16 that they should be advised that they have the right to take
17 exhibits.

18 THE COURT: I am going to do that.

19 MR. HIGGINS: Be advised what?

20 MR. GARNETT: That they can take the exhibits.

21 (In open court.)

22 THE COURT: There is nothing further I have to
23 instruct you on except, as I have indicated to you before, you
24 will have the indictment with you. You will have the form of
25 verdict which will be supplied to you. You are entitled to

2 have any of the exhibits that you want. Just call for them;
3 send us a note if you want any exhibit and we will send them
4 in to you.

5 And I am pleased that -- well, you can see what
6 happens with our having the alternate jurors here. If we
7 had waited, I don't think the young lady came in until about
8 11 o'clock. I'm sure she got tied up in the subway. While I
9 hesitated not to let her continue in here, we would have all
10 been held up even longer, so that is why we did it. But it
11 was necessary. You never know when you need an alternate
12 juror.

13 But your services are terminated in this case. I
14 want to express my appreciation to you for being here and
15 attending as you have, your attendance at court, and your
16 patience and listening to the witnesses and so forth. Do
17 you have anything in the jury room or not?

18 ALTERNATE: Yes.

19 THE COURT: Well, you can't go back with the other
20 jurors. So, if you would just -- maybe you could let him
21 into the jury room before the other jurors go?

22 All right. Does he have to report back to the
23 jury clerk?

24 THE CLERK: Yes.

25 THE COURT: All right, you will have to report back

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2 to the jury clerk.

3 (Pause.)

4 THE COURT: Gentlemen, you haven't seen the form
5 of verdict. Do you wish to see it? It reads: "Count 1,
6 we find the defendant," blank, and so on down.

7 MR. HIGGINS: No problem.

8 THE COURT: Very well, Very good.

9 (Pause.)

10 THE COURT: We have to wait for the Marshal and
11 swear him in.

12 (Pause.)

13 (Marshal was duly sworn.)

14 (Jury retired at 12:19 p.m.)

15 THE COURT: Mr. Higgins, did you want to put some-
16 thing on the record?

17 MR. HIGGINS: Yes, your Honor. Before we break,
18 I just wanted to inform the Court why we terminated so
19 abruptly this morning. My client and I had a conference
20 over the last several days of the possibility of his testi-
21 fying. I had suggested to him that in my opinion, as recently
22 as this morning, and perhaps in view of the way the case went,
23 it would be best that he did testify, but my client, aware
24 of his right that he did not have to testify, chose not to
25 take the stand on his own behalf. I just wanted to inform

2 the Court of that, that abrupt ending of the trial.

3 THE COURT: Very good. All right.

4 I suggest, can you agree on the exhibits, have
5 them all together?

6 MR. GARNETT: Yes, sir.

7 THE COURT: You have them all together?

8 MR. GARNETT: Yes.

9 THE COURT: Do you agree, if the jury comes in
10 with a note that they want all the exhibits, we can send
11 them in?

12 MR. HIGGINS: Yes, and a clean copy of the indict-
13 ment.

14 THE COURT: A clean copy of the indictment did go
15 to them.

16 MR. HIGGINS: They took it?

17 THE COURT: Yes.

18 Now, all I can suggest, if you are going to be
19 away from here, you let Mr. Matarese know where you will be.
20 We'll probably get a note from them fairly quickly. When
21 lunch comes in, then you can have your lunch, too, but be
22 available.

23 MR. HIGGINS: Fine.

24 THE COURT: All right.

25 (Recess taken.)

(Jury not present.)

THE COURT: We have a note, gentlemen, from the jury, in which they request certain exhibits, including the statements of witnesses Gary and Melton, which are not in evidence.

The note reads, the A T & T check, which is in evidence, that's no problem. Statements made by Archie Melton, Isaac Gary, William Devone, and all the twelve checks.

Do you want me to just inscribe on here the fact that the statements, the physical statements of Melton and Gary were not introduced in evidence and send in the rest of them?

MR. HIGGINS: No problem.

MR. GARNETT: That's agreeable, your Honor.

THE COURT: All right. Let's just make sure.

The written statements of Melton and Gary were not received in evidence; is that satisfactory?

MR. HIGGINS: Fine.

THE COURT: I have written here, the written statements of Archie Melton and Isaac Gary were not received in evidence.

Is that all right?

MR. GARNETT: That's fine, your Honor.

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2 MR. HIGGINS: Yes.

3 THE COURT: Return that note back to them.

4 xxx (Note marked Court's Exhibit number 1.)

5 (Recess taken.)

6 (Jury not present, 3:15 p.m.)

7 THE COURT: I received a note from the jury -- this
8 is in the absence of the jury -- can we have the Judge's
9 charge to the jury dealing with the area of willful and
10 coercion, signed Lynn Campion, Forewoman.

11 I will read to them, counsel, the charge on
12 knowingly and willfully, and the defense of coercion as I
13 charged them originally.

14 All right?

15 (Jury present.)

16 THE COURT: I received your note, which will be
17 Court's Exhibit 2.

18 xxx (Second note marked Court's Exhibit 2.)

19 THE COURT: "Can we see the Judge's charge to the
20 jury dealing with the area of willful and coercion, Lynn
21 Campion, Forewoman."

22 I will read to you my instructions to you previously
23 on this.

24 Knowingly and willfully. As to each of the twelve
25 counts alleged in the indictment, before you may find the

2 defendant guilty you must find that defendant acted knowingly
3 and willfully. A person acts knowingly if he acts voluntarily
4 and intentionally and not because of mistake or accident or
5 other innocent reason. The purpose of adding the word "know-
6 ingly" was to ensure that no one would be convicted for an
7 act done because of mistake or accident or other innocent
8 reason. A person acts willfully if he acts voluntarily and
9 intentionally and with the specific intent to do something
10 the law forbids, that is, to say, with bad purpose, either
11 to disobey or disregard the law.

12 Coercion. Defense of coercion. Coercion or
13 compulsion may provide a legal excuse for the crimes charged
14 in the indictment. In other words, however, to provide a
15 legal excuse for any criminal conduct, the compulsion must
16 be present and immediate, and of such a nature as to induce
17 a well-founded fear of impending death or serious bodily
18 injury and there must be no reasonable opportunity to escape
19 the compulsion without committing the crime or participating
20 in the commission of the crime. If the evidence in the case
21 should leave you with a reasonable doubt whether at the time
22 and place of the alleged offense the accused acted or failed
23 to act willfully and voluntarily, that is to say, whether the
24 accused was forced, in effect, to commit or aid in the commis-
25 sion of the crime charged in the indictment by coercion or

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2 compulsion as just explained, then you should find the
3 defendant not guilty.

4 Does that answer the request that you submitted
5 to me?

6 All right, you may retire and continue your de-
7 liberations.

8 (Jury retired at 3:18 p.m.)

9 (Recess taken.)

10 (Jury not present, 3:50 p.m.)

11 THE COURT: I have a note from the jury. The
12 jury is unable to come to a unanimous decision, signed Lynn
13 Campion, Forewoman.

14 I intend to call the jury in, ask them if they have
15 arrived at a verdict on any of the counts, unanimous verdict
16 on any of the counts, and if they have not, then I'm going to
17 give them an Allen Charge.

18 MR. HIGGINS: With respect to that, your Honor, I
19 would like to voice an objection on the record to giving
20 the jury an Allen Charge at this time. Would your Honor be
21 intending to charge the jury directly out of the text of the
22 Allen case?

23 THE COURT: Yes.

24 MR. HIGGINS: The straight Allen Charge?

25 THE COURT: Straight Supreme Court decision, so

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2 forth, yes.

3 MR. HIGGINS: Yes, your Honor, I just take exception
4 to that also. I don't recall the cases offhand, but I do
5 note some duly respectful language in the Second Circuit
6 here with respect to a straight Allen Charge. I believe
7 your Honor --

8 THE COURT: I don't think this is a block buster,
9 really.

10 MR. HIGGINS: Well, I think your Honor has already
11 instructed the jury as to how they are, how to go about
12 their deliberations, particularly that they were supposed to
13 deliberate with one another, language along those lines, and
14 I think, really, to give the jury a straight Allen Charge may
15 be unduly prejudicial to the defendant.

16 THE COURT: Well, I think this is a firm note that
17 indicates that they have some differences in there, and that
18 it is warranted under these circumstances, a short case like
19 this, very little testimony, that under these circumstances
20 this length of time of deliberating does warrant the giving
21 of the charge that I intend to give.

22 All right, bring the jury in, please.

23 (Jury present.)

24 THE COURT: I have your note which reads, as
25 follows: The jury is unable, underlined, to come to a unanimous

decision, signed Lynn Campion, Forewoman.

Has the jury arrived at a verdict on any of the counts, a unanimous verdict on any of the counts?

THE FOREWOMAN: Only on two.

THE COURT: You have come to a verdict on two of the counts?

THE FOREWOMAN: Yes.

THE COURT: Are you prepared to report that verdict now? You have come to a unanimous decision on two of the counts.

THE FOREWOMAN: We were taking a poll on two.

THE COURT: Would you like to go back and then report back to me whether you have reached a unanimous verdict on any of the counts and then would you report back to me and then I will give you further instructions.

(Jury left the courtroom.)

(Recess taken.)

(Jury present, 4:10 p.m.)

THE COURT: Have you arrived at a unanimous verdict on any of the counts?

THE FOREWOMAN: Yes.

THE COURT: On what counts have you arrived at a unanimous verdict on any of the counts?

THE FOREWOMAN: On counts 4 and 6 we arrived at a

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2 decision.

3 THE COURT: All right.

4 Jimmy, will you take the verdicts on counts 4 and
5 6.

6 THE CLERK: On count 4, has the jury agreed upon a
7 unanimous verdict?

8 THE FOREWOMAN: We reached a unanimous verdict of
9 not guilty.

10 THE CLERK: All right. On count 6 what is the
11 jury's verdict?

12 THE FOREWOMAN: Unanimously not guilty.

13 THE CLERK: Ladies and gentlemen of the jury, listen
14 to your verdict as it stands recorded. You say you find the
15 defendant not guilty on count 4, not guilty on count 6, so
16 say all of you?

17 (Each juror answered in the affirmative.)

18 THE COURT: Now, Madam Forelady, in connection --
19 Madam Forewoman --

20 THE FOREWOMAN: Foreperson.

21 THE COURT: Foreperson, I have seen it come that way,
22 too. You have indicated that you are unable to come to a
23 unanimous decision on the other charges in here, and I have
24 indicated to you previously that you must consider each count
25 separately and the evidence pertaining to it separately. Do

2 you feel that further deliberations would be helpful in
3 resolving the disputes that exist among you?

4 THE FOREWOMAN: I think there is too much variance
5 in the vote.

6 THE COURT: Let me suggest this to you: with
7 reference to this note of yours, I want to give you some
8 further instructions. This case is an important one to the
9 Government, and equally it is important to the defendant. It
10 is desirable both from the viewpoint of the Government and the
11 defendant, if a verdict can be reached, that this be done.
12 This, of course, means only a verdict that reflects the
13 conscientious judgment of each juror. This Court does not
14 propose to ask, indeed it does not have the right to ask or
15 inquire how you currently stand as to the defendant on any
16 of the other counts charged in the indictment. It is normal
17 for jurors to have differences. Indeed, it is quite common.
18 Frequently jurors, after extended discussion, may find that
19 a point of view which originally represented a fair and
20 considered judgment might well yield upon the basis of
21 argument, further discussion, and upon a further review of
22 the facts and the evidence.

23 Remember also, and I emphasize this, no juror must
24 vote for any verdict unless, after full discussion, considera-
25 tion of the issues and exchange of views, that verdict

2 represents his or her considered judgment. Often further
3 consideration may indicate that a change of one's original
4 attitude is fully justified upon the law and the facts. To
5 aid you in your further deliberations, I am going to quote
6 to you a statement from the Supreme Court decision of the
7 United States in a case where the jury sought to report a
8 disagreement.

9 This is what the Supreme Court had to say on that
10 occasion.

11 "Although verdicts must be the verdict of each
12 individual juror and not a mere acquiescence in the conclusions
13 of his fellows, they should examine the question submitted
14 with candor and with a proper regard and deference to the
15 opinions of each other. They should listen, with a disposition
16 to be convinced, to each others arguments, that if the much
17 larger number were for conviction, a dissenting juror should
18 consider whether his doubt was a reasonable one which made
19 no impression upon the minds of some jurors equally honest,
20 equally intelligent as himself. If, upon the other hand, the
21 majority were for acquittal, the minority ought to ask them-
22 selves whether they might not reasonably doubt the correct-
23 ness of the judgment which was not concurred in by the majority."

24 That quotation sets forth a viewpoint that you
25 might well want to consider as you resume your deliberations.

2 But please remember that you must review the evidence and
3 you must vote finally according to your own conscientious
4 judgment. As I said at the outset, this case is equally
5 important to both the Government and the defendant. If a
6 verdict can be reached, it is desirable both from the view-
7 point of the Government and the defendant that this be done.

8 And, finally, I want you to remember that you are
9 not partisans. You are judges, judges of the facts. Your
10 sole interest here is to seek the evidence, seek the truth
11 from the evidence in the case.

12 I would urge upon you to retire and consider what
13 I have said here and continue your deliberations.

14 (Jury retired at 4:15 p.m.)

15 (Recess taken.)

16 (Jury present, 5:40 p.m.)

17 THE CLERK: Madam Forelady, has the jury agreed upon
18 a verdict?

19 THE FOREWOMAN: Yes, we have.

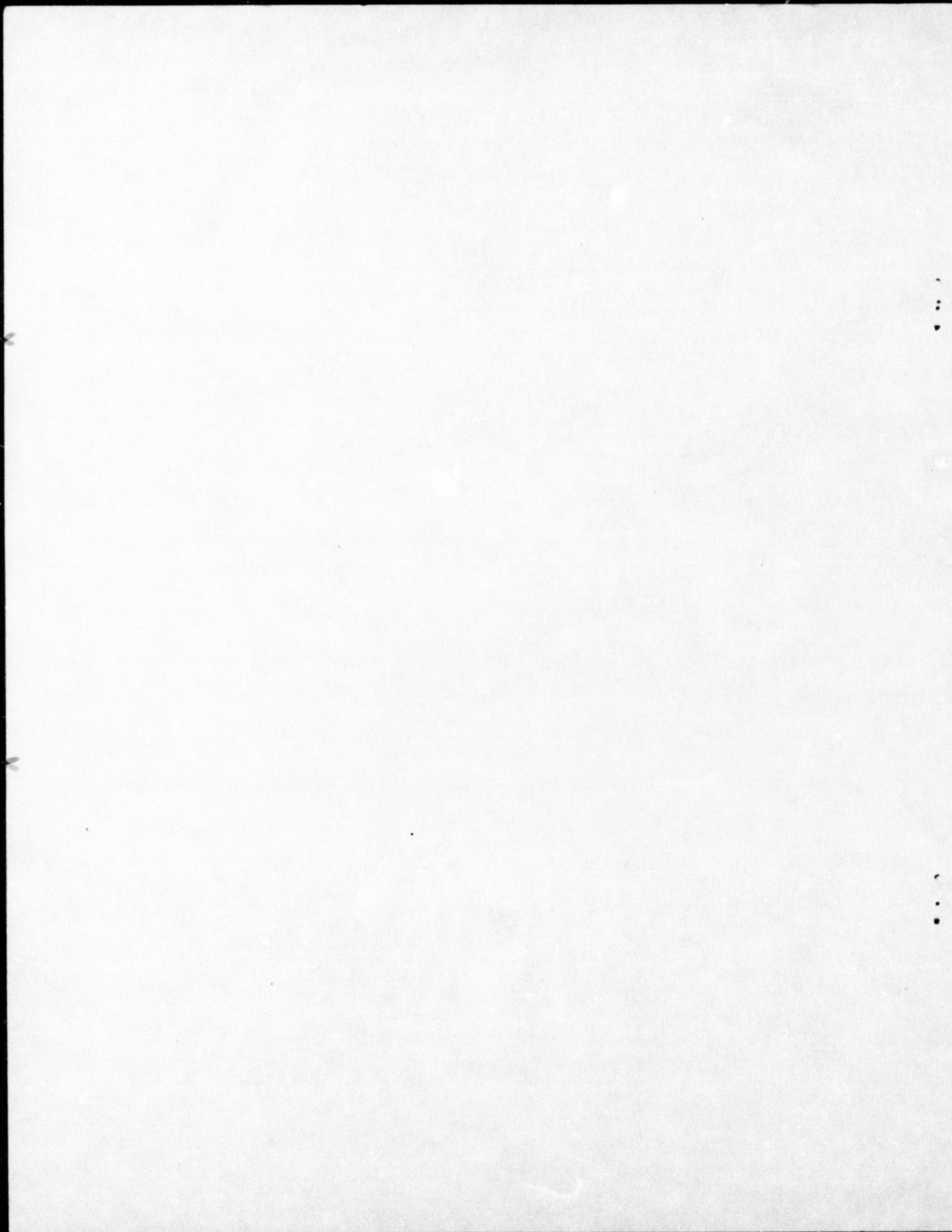
20 THE CLERK: How do you find the defendant in count
21 1?

22 THE FOREWOMAN: Not guilty.

23 THE CLERK: Count 2?

24 THE FOREWOMAN: Guilty.

25 THE CLERK: Count 3?



2 THE FOREWOMAN: Guilty.

3 THE CLERK: Count 5?

4 THE FOREWOMAN: Not guilty.

5 THE CLERK: Count 7?

6 THE FOREWOMAN: Guilty.

7 THE CLERK: Count 8?

8 THE FOREWOMAN: Guilty.

9 THE CLERK: Count 9?

10 THE FOREWOMAN: Not guilty.

11 THE CLERK: Count 10?

12 THE FOREWOMAN: Not guilty.

13 THE CLERK: Count 11?

14 THE FOREWOMAN: Not guilty.

15 THE CLERK: Count 12?

16 THE FOREWOMAN: Guilty.

17 THE CLERK: Ladies and gentlemen of the jury,

18 listen to your verdict as it stands recorded: you say you

19 find the defendant not guilty in count 1, guilty in count 2,

20 guilty in count 3, not guilty in count 5, guilty in count 7,

21 guilty in count 8, not guilty in count 9, not guilty in

22 count 10, not guilty in count 11, guilty in count 12; so say

23 you all?

24 (Each juror answered in the affirmative.)

25 THE COURT: Would you poll the jury and ask each

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AUG 25 1975
PAUL J. GUERIN
U.S. ATTORNEY
NO. DIST. OF N.M.